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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,534	09/19/2006	John Hatrick-Smith	550639.00009	4914
26710 7590 03/24/2010 QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497				
EXAMINER				
FETSUGA, ROBERT M				
ART UNIT		PAPER NUMBER		
3751				
NOTIFICATION DATE		DELIVERY MODE		
03/24/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pat-dept@quarles.com

Office Action Summary

Application No.

10/593,534

Applicant(s)

HATRICK-SMITH, JOHN

Examiner

Robert M. Metsuga

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on September 19, 2006 & July 21, 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25, 27-36 and 38-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25, 27-36 and 38-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-544)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 09/19/2006, 12/27/2007
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. The drawings are objected to because reference numeral "18" designates different elements between Figs. 2 and 3, and reference numeral "17" designates different elements in Fig. 3.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter set forth in claims 34 and 42 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing

figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The disclosure is objected to because of the following informalities: Page 4, line 21 and page 5, line 19, "18" denotes different elements; page 5, lines 5 and 18, "17" denotes different elements; page 5, lines 18 and 22, "17" denotes different elements; and page 5, lines 19 and 20, "18" denotes different elements. Appropriate correction is required.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the subject matter set forth in claims 33, 34, 41 and 42 could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

4. Claims 28, 35 and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 28 is unclear as to the relationship between the "return panel" on line 2 thereof, and the "return panel" on line 2 of claim 27.

Claim 35 recites an "upstand". The claim term is described at page 4 using drawing reference numeral 18. However, neither element 18 in Fig. 2, nor element 18 in Fig. 3 is seen to extend "around the periphery" of the shower base 5 as recited in the claim. The metes and bounds of this recitation is not ascertainable. Claim 43 is similarly indefinite.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 25, 27, 28 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Montanari.

The Montanari reference discloses a shower enclosure comprising: a door 9; a shower base 3 including a floor 33; a waste outlet 35; a drain channel 34; and a return panel 7a, as claimed. Re claim 25, the "non-sealed gap" is depicted in Fig. 8. Re claim 28, the "non-sealed gap" is depicted in Fig. 1.

7. Claims 29, 35 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montanari and Zaccai et al.

Re claim 29, although the drain channel of the Montanari shower does not include a cover member, as claimed, attention is directed to the Zaccai et al. (Zaccai) reference which discloses an analogous shower which further includes a drain channel 14 having a cover member 90. Therefore, in consideration of Zaccai, it would have been obvious to one of ordinary skill in the shower art to associate a cover member with the Montanari drain channel in order to filter drain water.

Re claim 35, the Montanari shower base further includes an "upstand" 32. Although the upstand of the Montanari shower base is not absent at the front, as claimed, attention is again directed to Zaccai which discloses an upstand 24 absent at the front (Fig. 1). Therefore, in further consideration of Zaccai, it would have been obvious to one of ordinary skill in the

shower art to remove a front portion of the Montanari upstand in order to facilitate wheelchair access.

8. Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montanari and Jurek et al. '518.

Although the floor of the Montanari shower base is not planar, as claimed, attention is directed to the Jurek et al. '518 (Jurek) reference which discloses an analogous shower base which further includes a planar (col. 3 lns. 27-31) floor 12. Therefore, in consideration of Jurek, it would have been obvious to one of ordinary skill in the shower base art to associate a planar nature with the Montanari floor in order to facilitate tiling.

9. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montanari and Gerloff.

Although the waste outlet of the Montanari shower base does not include a cover member, as claimed, attention is directed to the Gerloff reference which discloses an analogous shower base which further includes a waste outlet 4 having a cover member 2b. Therefore, in consideration of Gerloff, it would have been obvious to one of ordinary skill in the shower base art to associate a cover member with the Montanari waste outlet in order to facilitate tiling.

10. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Montanari and McAllister '571.

Although the base of the Montanari shower is not barrier free at the front, as claimed, attention is directed to the McAllister '571 (McAllister) reference which discloses an analogous shower which further includes a base 12 having a barrier free front (abstract). Therefore, in consideration of McAllister, it would have been obvious to one of ordinary skill in the shower art to associate a barrier free front with the Montanari base in order to facilitate wheelchair access.

11. Claims 36 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montanari and Jurek as applied to claim 31 above, and further in view of Payne.

Although the base of the Montanari shower does not include a formation, as claimed, attention is directed to the Payne reference which discloses an analogous shower which further includes a base 1 having a formation 12. Therefore, in consideration of Payne, it would have been obvious to one of ordinary skill in the shower art to associate a formation with the Montanari base in order to facilitate wall support.

12. Claims 38 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montanari, Jurek and Payne as applied to claim 36 above, and further in view of Zaccai.

To associate a cover member with, and remove a front portion of, the Montanari shower would have been obvious to one of ordinary skill in the art in consideration of Zaccai analogous to the discussion supra.

13. Claims 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montanari, Jurek and Payne as applied to claim 36 above, and further in view of Gerloff.

To associate a cover member with the Montanari waste outlet would have been obvious to one of ordinary skill in the art in consideration of Gerloff analogous to the discussion supra.

14. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Montanari, Jurek and Payne as applied to claim 36 above, and further in view of McAllister.

To associate a barrier free front with the Montanari base would have been obvious to one of ordinary skill in the art in consideration of McAllister analogous to the discussion supra.

15. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

16. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886

Art Unit: 3751

who can be most easily reached Monday through Thursday. The

Office central fax number is 571/273-8300.

/Robert M. Fetsuga/
Robert M. Fetsuga
Primary Examiner
Art Unit 3751